

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re: RENEE DENISE CRENSHAW,

**Case No.: 17-35091-KRH
Chapter 7**

Debtor.

**TRUSTEE'S APPLICATION TO EMPLOY AUCTION.COM
AS AUCTIONEER AND SEAN RYAN AS LISTING AGENT
PURSUANT TO 11 U.S.C. §§ 327 AND 328**

COMES NOW, the Chapter 7 Trustee, Roy M. Terry, Jr. (the "**Trustee**"), pursuant to 11 U.S.C. §§ 327 and 328(a), and in accordance with Federal Rule of Bankruptcy Procedure 2014, and hereby requests authorization to employ Auction.com ("**ADC**" and/or "**Auctioneer**") as auctioneer under the terms set forth in the agreement dated May 29, 2018 (the "**Marketing Agreement**"), attached to ADC's Affidavit of Disinterestedness (*Composite Exhibit A, attached*) and Sean Ryan as listing agent (the "**Listing Agent**") under the terms set forth in the agreement dated March 12, 2018 (the "**Listing Agreement**"), attached to Listing Agent's Affidavit of Disinterestedness (*Composite Exhibit B, attached*). In support thereof, the Trustee respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
2. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
3. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

4. On October 11, 2017 (the “**Petition Date**”), Renee Denise Crenshaw (the “**Debtor**”) commenced this case by filing a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code.

5. On October 12, 2017, Roy M. Terry, Jr. was appointed as the Chapter 7 Trustee in this case and he continues to serve in that capacity.

6. Pursuant to 11 U.S.C. § 327(a) and subject to this Court's approval, the trustee is empowered to employ auctioneers and listing agents to assist the Trustee in carrying out his duties.

7. The Trustee requires the assistance of a competent and experienced auctioneer/listing agent to enable him to properly perform his statutory duties. Such assistance will involve, without limitation, the marketing and sale of the real property commonly known as 5012 Erringer Place, Philadelphia, PA 19144 (the “**Property**”), in which the Debtor has a 100% ownership interest, to benefit the bankruptcy estate.

8. The Trustee has selected Auction.com as the Auctioneer and Sean Ryan as the Listing Agent, because of their knowledge and experience in liquidation of assets.

9. By separate motion, the Trustee requests the entry of an order approving the sale of the Property by auction, using ADC’s services.

10. To facilitate the orderly sale of the Property, the Trustee requests authority pursuant to Bankruptcy Code §§ 327 and 328(a) to (i) employ ADC to market the Property for sale and conduct the Auction, and to pay the Buyer’s Premium directly to ADC at closing of the sale of the Property, and (ii) employ the Listing Agent to conduct open houses and to facilitate communications with prospective buyers, and to pay the Commission.

APPLICATION

A. ADC Should Be Retained and Compensated for the Public Auction of the Property

11. Bankruptcy Code § 328(a) provides, in relevant part, that a trustee “with the court’s approval, may employ or authorize the employment of a professional person under section 327...on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed percentage or fee basis, or on a contingent fee basis.” 11 U.S.C. § 328(a). Section 328 of the Bankruptcy Code permits the Court to approve ADC’s compensation arrangement as set forth in the Marketing Agreement, and the Court may then allow compensation different from the terms provided in the Marketing Agreement only “if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.”

12. ADC operates and manages one of the largest online real estate auction platforms in the country, conducting residential and commercial real estate auctions and providing marketing services to promote the auction of assets for clients. ADC has extensive experience marketing real property sales and conducting online auctions, thereby creating a process to liquidate the Property with significantly faster and better execution for the estate. The Trustee believes that the highest and best value for the Property will be generated via ADC’s online auction and that an online auction is in the best interest of the estate. The Trustee further believes that the retention of ADC is in the best interests of the estate.

13. ADC is licensed and bonded as a real estate agent/broker and is authorized to conduct auctions in the State of Pennsylvania. ADC has also submitted an appropriate bond to the US Trustee with regard to selling the Property.

14. ADC will be paid a commission equal to five percent (5%) of the Winning Bid Amount, which will be charged as a “Buyer’s Premium” payable by the purchaser(s) at closing directly to ADC. The Buyer’s Premium will only be paid if the Property is successfully sold to a third party bidder. If the Property is ultimately sold back to the Secured Creditor by credit bid, ADC will not be paid a Buyer’s Premium or commission. Under any scenario, the estate does not have any obligation to compensate ADC in any manner.

15. The Trustee submits that ADC’s terms of employment and compensation as set out in the Marketing Agreement are reasonable in light of ADC’s extensive experience and the nature of the services ADC provides, which do not translate well to hourly billing. Thus, the Trustee requests that ADC’s compensation be approved under Section 328(a) of the Bankruptcy Code and seeks a waiver of all monthly, interim, and final fee application requirements. As further detailed in the sale motion, the Trustee seeks authority to release the Buyer’s Premium to ADC at closing, subject only to a successful closing of the sale transaction, without need for further order of this Court with respect to the compensation of ADC.

16. ADC attested that it is a disinterested person within the meaning of Section 101(14) of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2014 and 2016(a). ADC also attests, pursuant to Bankruptcy Rule 2016, that it shall not split or share the five percent (5%) Buyer’s Premium with any other individual or entity.

17. Upon completion of the auction, ADC will provide to the Trustee, for his Report of Sale to the Court, a report summarizing the results of the auction and stating the fees and expenses paid to ADC in accordance with the Order approving its retention.

B. The Listing Agent Should Be Retained and Compensated in Connection with the Sale of the Property

18. For the aforementioned reasons, the Trustee believes that the highest and best value for the Property will be generated via auction and that an auction is in the best interest of the estate. To facilitate additional marketing of the Property, open houses, and certain communication with prospective buyers, the Trustee also believes the retention of a Listing Agent is in the best interest of the estate and its creditors.

19. With respect to sales to third party purchasers only, the Listing Agent will be paid a commission equal to three percent (3%) of the Winning Bid Amount, which will be paid by the Secured Creditor at closing directly to the Listing Agent. With respect to auctions in which the highest bidder is the Secured Creditor, by credit bid, no commission will be paid to the Listing Agent. Under no circumstance shall the estate have any obligation to pay the Listing Agent a commission.

20. The Trustee submits that the Listing Agent's terms of employment and compensation as set out in the Listing Agreement are reasonable in light of the nature of the services the Listing Agent provides. Thus, the Trustee requests that the Listing Agent's compensation shall be approved under Section 328(a) of the Bankruptcy Code and seeks a waiver of all monthly, interim, and final fee application requirements. As further detailed in the sale motion, the Trustee seeks authority to release the Commission to the Listing Agent at closing, subject only to a successful closing of the sale transaction, without further order of this Court.

21. The Listing Agent attested that it is a disinterested person within the meaning of Section 101(14) of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2014 and 2016(a). The Listing Agent also attests, pursuant to Bankruptcy Rule 2016, that it shall not split or share the three percent (3%) Commission with any other individual or entity, except to the

extent that the winning bidder is represented by a real estate agent. In that case, the three percent (3%) commission shall be split as agreed to between the listing agents.

WHEREFORE, the Chapter 7 Trustee respectfully requests that the Court enter an order authorizing the employment of Auction.com as Auctioneer and Sean Ryan as Listing Agent, and granting such further relief as it deems just and proper.

Respectfully submitted this 29th day of May, 2018.

ROY M. TERRY, JR., CHAPTER 7 TRUSTEE
FOR THE BANKRUPTCY ESTATE OF
RENEE DENISE CRENSHAW

/s/ Roy M. Terry, Jr.

Roy M. Terry, Jr., VSB # 17764
SANDS ANDERSON PC
P.O. Box 2188
Richmond, VA 23219-2188
Telephone: 804.648.1636

ND4815-2905-7126

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May, 2018, a true copy of the foregoing Motion was electronically filed with the Court using the CM/ECF system which provides electronic notification to all parties that receive notice in this case and mailed, postage fully prepaid, to the parties on the attached service list and to the following parties¹:

John G. Merna, Esquire
The Merna Law Group, PC
3419 Virginia Beach Boulevard, Suite 236
Virginia Beach, VA 23452
Debtor Counsel

¹ In accordance with Local Bankruptcy Rule 5005-1(C)(8), when service is made on more than 25 persons or parties, the service list is not attached to copies served on each of the persons or parties, but is attached to the original Certificate of Service filed with the Court.

Renee Denise Crenshaw
4211 Dorset Road
Richmond, VA 23234
Debtor

Mr. Cooper
d/b/a Nationstar Mortgage
8950 Cypress Waters Blvd.
Coppell, TX 75019

Mr. Cooper
d/b/a Nationstar Mortgage
c/o Mary F. Balthasar Lake, Esquire
Shapiro & Brown, LLP
501 Independence Parkway, Suite 203
Chesapeake, VA 23320
Counsel for Mr. Cooper

Robert Van Arsdale, Esquire
Office of the U.S. Trustee
701 East Broad Street, Suite 4304
Richmond, VA 23219

Auction.com, LLC
1 Mauchly
Irvine, CA 92618

/s/ Roy M. Terry, Jr.

Label Matrix for local noticing

0422-3

Case 17-35091-KRH

Eastern District of Virginia

Richmond

Fri May 25 15:17:35 EDT 2018

American Express

PO Box 981537

El Paso, TX 79998-1537

Nationstar Mortgage LLC d/b/a Mr. Cooper
Shapiro & Brown, LLP

501 Independence Parkway, Suite 203

Chesapeake, VA 23320-5174

(p)BANK OF AMERICA

PO BOX 982238

EL PASO TX 79998-2238

Bank of America Home Loans

P.O. Box 660694

Dallas, TX 75266-0694

Bank of America Home Loans *

CT CORPORATION SYSTEM

4701 COX RD STE 301

Glen Allen, VA 23060-6802

Barclays Bank Delaware

PO Box 8803

Wilmington, DE 19899-8803

CJW Medical Center

PO Box 740760

Cincinnati, OH 45274-0760

Capital One

Po Box 70885

Charlotte, NC 28272-0885

Chase Card

P.O. Box 15298

Wilmington, DE 19850-5298

Chase Mortgage

P.O. Box 24696

Columbus, OH 43224-0696

Chase Mortgage*

c/o Corporation Service Co.

1111 E Main Street, 16th Floor

Sparrows Point, MD 21219-0000

Chippenham JW Med Ctrs

P.O. Box 13620

Richmond, VA 23225-8620

City National Bank of WV

308 Goff Mountain Road

Charleston, WV 25313-1415

(p)CITY OF PHILA SCHOOL DISTRICT OF PHILA

MUNICIPAL SERVICES BUILDING

1401 JOHN F KENNEDY BLVD 5TH FLOOR

PHILADELPHIA PA 19102-1617

City of Philadelphia

PO Box 41819

Philadelphia, PA 19101-1819

Credit One Bank

PO Box 98873

Las Vegas, NV 89193-8873

(p)DISCOVER FINANCIAL SERVICES LLC

PO BOX 3025

NEW ALBANY OH 43054-3025

Enerbank USA

1245 Brickyard Road Ste 600

Salt Lake City, UT 84106-2562

James River Emergency Group

P.O. Box 14000

Belfast, ME 04915-4033

Macys

PO Box 8218

Mason, OH 45040-8218

Nationstar Mortgage

8950 Cypress Waters Blvd

Coppell, TX 75019-4620

Nationstar Mortgage*

Bank of America Center, 16th F

1111 East Main Street

Richmond, VA 23219-3531

Nationwide Credit, Inc

P.O. Box 14581

Des Moines, IA 50306-3581

Northland Group

PO Box 390846

Minneapolis, MN 55439-0846

Ocwen Loan Servicing

1661 Worthington Rd Ste 100

West Palm Beach, FL 33409-6493

Ocwen Loan Servicing*

Corporation Service Company

1111 East Main Street

Richmond, VA 23219-3531

Onemain

PO Box 1010

Evansville, IN 47706-1010

Phillips & Cohen Associates

PO Box 5790

Hauppauge, NY 11788-0164

SYNCB/Care Credit
PO Box 965036
Orlando, FL 32896-5036

SYNCB/Paypal Extras MC
PO Box 965005
Orlando, FL 32896-5005

SYNCB/TJX Cos DC
PO Box 965005
Orlando, FL 32896-5005

Sears/CBNA
PO Box 6282
Sioux Falls, SD 57117-6282

Sears/CBNA
PO Box 6283
Sioux Falls, SD 57117-6283

(p)TD BANKNORTH NA
70 GRAY ROAD
FALMOUTH ME 04105-2299

WF PLL
P.O. Box 94435
Albuquerque, NM 87199-4435

Wells Fargo Card Sevices
PO Box 14517
Des Moines, IA 50306-3517

John G. Merna
The Merna Law Group, P.C.
3419 Virginia Beach Boulevard, #236
Virginia Beach, VA 23452-4419

Judy A. Robbins
Office of the U.S. Trustee - Region 4 -R
701 E. Broad Street, Suite 4304
Richmond, VA 23219-1849

Renee Denise Crenshaw
4211 Dorset Road
Richmond, VA 23234-3640